



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,937	02/15/2002	Herbert M. Dean	dean0202con	3941
23580	7590	04/06/2006	EXAMINER	
MESMER & DELEAULT, PLLC 41 BROOK STREET MANCHESTER, NH 03104			HUI, SAN MING R	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,937

Applicant(s)

DEAN ET AL.

Examiner

San-ming Hui

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 17, 2005 has been entered.

Warning

Applicant is advised that should claim 1 be found allowable, claim 17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Both claims are drawn to composition comprising the same components.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearle (American Heart Journal, 1990 Sep; 120(3):739-742), Carruthers et al. (American Journal of Cardiology, 1993;71:575-581), Abby et al. (Journal of the American Board of Family Practice, 1998; 11(5):391-398), Oakley et al. (The Journal of Nutrition, 1996;126(3): 751S – 755S), and Behounek et al. (US Patent 5,691,375) in view of Rork et al. (US Patent 5,882,682), references of record.

Pearle teaches that beta-blockers such as timolol, metoprolol, atenolol, and propranolol reducing the overall mortality and the incidence of recurrent myocardial infarction (See the abstract; also page 740, col. 1, second paragraph).

Carruthers et al. teaches atenolol reducing the risk of coronary heart disease (See the abstract).

Abby et al. teaches folic acid and vitamin B₆ are useful in reducing the risk of coronary heart disease such nonfatal myocardial infarction and fatal coronary heart disease (See particularly page 395, Table 2).

Art Unit: 1617

Oakley et al. teaches vitamin B₁₂ supplement is useful with folic acid administration to avoid the folic acid adverse effect: B₁₂ deficiency (See page 3, third and fourth paragraph).

Behounek et al. teaches HMG-CoA reductase inhibitor such as pravastatin is useful in reduce the risk of cardiovascular event (See the abstract).

The references do not expressly the incorporation of beta-blockers such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors such as pravastatin, folic acid, vitamin B₆, and vitamin B₁₂ into a single once-a-day dosage unit.

Rork et al. teaches a sustained release system that can include beta-blockers such as timolol, metoprolol, atenolol, and propranolol and statin cholesterol lowering agents such as simvastatin, pravastatin, and lovastatin (See col. 6, line 64-66 and col. 7, line 16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate beta-blockers such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors such as pravastatin, folic acid, vitamin B₆, and vitamin B₁₂ into a single once-a-day dosage unit.

One of ordinary skill in the art would have been motivated to incorporate beta-blockers, such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors, such as pravastatin, folic acid, vitamin B₆, and vitamin B₁₂ into a single once-a-day dosage unit. All the agents herein: different beta-blockers such as timolol, metoprolol, atenolol, and propranolol, HMG-CoA reductase inhibitors such as pravastatin, folic acid, and vitamin B₆ are all known to reduce risk of cardiovascular diseases. Possessing the

Art Unit: 1617

teachings of the cited prior art, combining two or more agents which are known to be useful to reduce risk of cardiovascular disease individually into a single sustained release, once-daily composition useful for the very same purpose is prima facie obvious (See *In re Kerkhoven* 205 USPQ 1069), absent evidence to the contrary. Furthermore, possessing the teaching of Oakley et al., one of ordinary skill in the art would incorporate vitamin B₁₂ into any folic acid containing composition including the instant composition since vitamin B₁₂ administration would prevent folic acid adverse effect such as vitamin B₁₂ deficiency.

Response to Arguments

Applicant's arguments filed November 17, 2005 with regard to the improved compliance by the combination products have been fully considered but they are not persuasive. Firstly, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In the instant case, the cited prior arts clearly suggest that the herein claimed compounds as useful in reducing risk of cardiovascular disease. Therefore, combining these agents into a single composition useful for the very same purpose would be seen to be obvious (See *Kerkhoven supra*). The arguments are directed to the method of improving patient compliance; however, the claims are directed to composition.

Applicant's arguments filed November 17, 2005 averring the incorporation of ACE inhibitors would reduce the effect of cardioprotection have been considered, but

Art Unit: 1617

are not found persuasive. Firstly, the claims do not recited ACE inhibitors nor the rejections base on the teachings of ACE inhibitors. Arguments directed to unclaimed limitations are considered moot. Secondly, the Hippisley-Cox reference actually teaches the different combinations of various compounds are effective in reduction of cardiovascular disease – in various degrees. Such results are expected since different agents are employed, various degree of effectiveness is reasonably expected.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 1617

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


San-ming Hui
Primary Examiner
Art Unit 1617